

APPEAL NO. 022456  
FILED OCTOBER 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 3, 2002. With respect to the issues before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter and that the carrier would be relieved from liability for SIBs for the period from March 30 to April 10, 2002, because of the claimant's failure to timely file his Application for [SIBs] (TWCC-52). In his appeal, the claimant argues that the hearing officer's determination that he did not satisfy the good faith requirement in the relevant qualifying period is against the great weight of the evidence. The claimant also argues that his former attorney's failure to timely file his TWCC-52 should not be held against him. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement in the qualifying period for the fifth quarter of SIBs by demonstrating either that he made a good faith effort to look for work or by demonstrating that he satisfactorily participated in a vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). The record reflects that the claimant did not look for work in three weeks of the qualifying period, and as such, the hearing officer did not err in determining that the claimant failed to satisfy the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)). In addition, the claimant did not present any evidence to support his assertion that he satisfactorily participated in a vocational rehabilitation program sponsored by the TRC. Thus, the hearing officer did not err in determining that the claimant did not satisfy the good faith requirement pursuant to Rule 130.102(d)(2). Finally, although the claimant did not pursue an inability to work theory at the hearing, he appears to argue on appeal that he had no ability to work in the qualifying period for the fifth quarter. Again, the claimant did not present evidence sufficient to demonstrate his entitlement to SIBs under Rule 130.102(d)(4), in that there is not a narrative that specifically explains how his compensable injury caused a total inability to work and there are other records that show that the claimant was able to work in the qualifying period. Nothing in our review of the record reveals that the challenged good faith determinations are so against the great weight as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb those determinations, or the determinations that the claimant is not entitled to SIBs for the fifth quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant does not dispute that his SIBs application was not timely filed. Rather, he argues that his former attorney's failure to timely file the form should not be held against him. There is no basis for granting the claimant the relief he seeks. To the contrary, the claimant is bound by the action, or in this instance the inaction, of his former attorney. Texas Workers' Compensation Commission Appeal No. 93605, decided August 26, 1993, citing Texas Employers Ins. Ass'n v. Wermeske, 162 Tex. 540, 349 S.W.2d 90 (1961). The carrier did not receive the claimant's TWCC-52 until April 10, 2002, and, as a result, the hearing officer properly determined that the carrier would have been relieved from liability for SIBs for the period from March 30 to April 10, 2002, had the claimant been found to be entitled to those benefits.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **BITUMINOUS CASUALTY CORPORATION** and the name and address of its registered agent for service of process is

**GLENN CAMERON  
222 WEST LAS COLINAS BOULEVARD, SUITE 1720  
IRVING, TEXAS 75016-7968.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Veronica Lopez  
Appeals Judge

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Michael B. McShane  
Appeals Judge